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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

GIOVANNI ZOCCA,

Plaintiff and Respondent,

v.

RAFFAELE ZOCCA et al.,

Defendants and Appellants.

A130701

(San Francisco City & County
Super. Ct. No. CGC-04-436457)

This is the latest appeal arising from more than 25 years of litigation between Giovanni Zocca and his brother and sister-in-law, Raffaele and Mary Zocca.¹ The Zoccas appeal from the trial court's award of statutory attorney fees to Giovanni for fees he incurred in the last appeal. We affirm the award.

I. BACKGROUND

In 2007, Raffaele prevailed in a suit Giovanni brought against him for malicious prosecution and defamation. He was awarded his costs of suit and judgment in the amount of \$24,684. He recorded an abstract of judgment for that amount in the City and County of San Francisco in August 2008. Giovanni thereafter moved successfully to have the judgment reduced to zero based on an offset arising from another case. The Zoccas twice sought relief from the order granting the offset under Code of Civil

¹ To avoid confusing the identities of the litigants, we refer hereinafter to the parties individually by their first names and to Raffaele and Mary, collectively, as the Zoccas.

Procedure² section 473, subdivision (b) (hereafter section 473(b)), but both motions were denied. While the second motion was pending, Giovanni filed his own motion under section 724.050 to require Raffaele to execute a satisfaction of judgment, and for attorney fees under section 724.080.³ By orders filed on January 21, 2009, the trial court denied the Zoccas' second and final motion for relief from the offset order and granted Giovanni's motion to require Raffaele to execute and deliver a satisfaction of judgment. The court denied Giovanni's request for a statutory fee award for prevailing on his satisfaction of judgment motion. The Zoccas appealed unsuccessfully to this court from both orders. (See *Zocca v. Zocca* (July 29, 2010, A124211) [nonpub. opn.] (*Zocca I*).)

Following this court's decision in *Zocca I*, Giovanni moved in the trial court for an award of \$44,152.50 in attorney fees incurred on appeal in defending the order requiring Raffaele to execute and deliver an acknowledgement of satisfaction of judgment. The trial court awarded him \$32,000 in fees. This timely appeal followed.

II. DISCUSSION

The Zoccas offer a series of objections to the fee award, none of which is persuasive.

A. Stay of Enforcement

The Zoccas first argue Giovanni's proceeding initiated under section 724.050 was automatically stayed on appeal by operation of section 916, subdivision (a)⁴ because

² All further statutory references are to the Code of Civil Procedure.

³ Section 724.050 establishes a procedure for persons affected by money judgment liens to (1) demand the execution and delivery of an acknowledgement of satisfaction of judgment if the judgment has been satisfied, and (2) obtain a court order for such execution and delivery if the judgment creditor fails to comply with the demand. Section 724.080 provides that "[i]n an action or proceeding maintained pursuant to this chapter [which includes section 724.050], the court shall award reasonable attorney's fees to the prevailing party."

⁴ Section 916, subdivision (a) states in relevant part: "Except as provided in Sections 917.1 to 917.9, inclusive, and in Section 116.810, the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order"

section 724.050 is an enforcement statute. According to the Zoccas, section 916, subdivision (a) “automatically stays almost all enforcement actions.” Giovanni “could incur no legal fees defending his motion for an acknowledgement of satisfaction of judgment under section 724.050 because this enforcement action was stayed when Appellants filed their notice of appeal.” In our view, as discussed below, the order compelling Raffaele to execute and deliver a satisfaction of judgment was not stayed under section 916, but even if it was stayed, that fact has no logical bearing on Giovanni’s entitlement to fees for defending the order on appeal.

Three express exceptions to the automatic stay provision of section 916 are relevant. Section 917.3 states: “The perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court *if the judgment or order appealed from directs the execution of one or more instruments* unless the instrument or instruments are executed and deposited in the office of the clerk of the court where the original judgment or order is entered to abide the order of the reviewing court.” (Italics added.) Section 917.2 states in relevant part: “The perfecting of an appeal shall not stay enforcement of the judgment or order of the trial court *if the judgment or order appealed from directs the assignment or delivery of personal property, including documents, . . .* unless an undertaking in a sum and upon conditions fixed by the trial court, is given that the appellant . . . will obey and satisfy the order of the reviewing court . . .” (Italics added.) Section 917.6 states: “The perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court *if the judgment or order appealed from directs the performance of two or more of the acts specified in Sections 917.1 through 917.5*, unless the appellant complies with the requirements of each applicable section.” (Italics added.)

Here, the section 724.050 order in issue came squarely within one or more of the above statutes. It ordered Raffaele to “[e]xecute and deliver to [Giovanni’s attorney] a notarized Acknowledgement Of Satisfaction Of Judgment in the exact form attached as Exhibit A.” The Zoccas make no claim, and there is no indication in the record they lodged an executed satisfaction of judgment with the court or gave any monetary undertaking guaranteeing delivery of such a satisfaction to Giovanni. Accordingly, the

order was not stayed while the appeal in *Zocca I* was pending—either automatically by operation of section 916, or by taking actions necessary to cause the order to be stayed as specified in sections 917.2, 917.3, and 917.6.

Even assuming for the sake of analysis the order was stayed pending appeal, the Zoccas would still be liable for attorney fees under section 724.080. The fact an order or judgment is stayed pending appeal does not eliminate the proponent’s need to defend the order on appeal. A stay merely maintains the status quo so that the appeal is not rendered moot or futile. (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 189.) It does not prevent the stayed order from being overturned on appeal if the party on whose behalf it was entered fails to defend it, or if it is found to have resulted from trial court error. Thus, had this court decided the appeal in *Zocca I* in favor of the Zoccas, we would have reversed the section 724.050 order entered in favor of Giovanni, and ordered the trial court to vacate it.

Furthermore, section 916 did not stay Giovanni’s “action” under section 724.050, as the Zoccas suggest. If it applied, it stayed “proceedings *in the trial court* upon the judgment or order appealed from . . . including enforcement of the judgment or order” (§ 916, subd. (a), italics added.) It did not stay proceedings *in this court* to determine the order’s validity. It also did not stay the proceedings necessary to *obtain* the order, since those were already complete by the time the appeal was filed. It only stayed further steps to *enforce* the order. The appeal did not concern enforcement of the order, it concerned whether entry of the order resulted from trial court error in denying the Zoccas’ motion under section 473(b).

Accordingly, we reject the Zoccas’ arguments based on the premise the appeal in *Zocca I* stayed proceedings under section 724.050.

B. Lack of Common Issues

The Zoccas next argue Giovanni was not entitled to fees because all or nearly all of his effort in *Zocca I* was directed to defending the order denying the Zoccas relief under section 473(b), not to defending the satisfaction of judgment order. According to the Zoccas, there were no common issues between the two subjects. They cite case law

to the effect that a litigant cannot increase his recovery of attorney fees by joining a cause of action in which fees are not recoverable to one for which they are recoverable. (See, e.g., *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129.)

In *Zocca I*, Giovanni argued, among other things, that the Zoccas had abandoned their appeal from the satisfaction of judgment order by failing in their opening brief to reference the order or present any argument for reversing it. While acknowledging the general rule that appellants abandon contentions of error by failing to address them in their briefs on appeal, we nonetheless rejected Giovanni's abandonment claim because any contention of error directed against the trial court's order denying relief under section 473(b) was also an attack on the validity of the satisfaction of judgment order, whether the latter order was expressly referenced or not: "In this case, however, the correctness of the satisfaction of judgment order depends entirely on the correctness of the order denying relief under section 473(b). Any argument for reversing the latter applies with equal force to the former. Accordingly, we find the Zoccas have not abandoned their appeal of either of the orders entered on January 21, 2009."

In other words, all of the factual and legal issues the Zoccas raised in *Zocca I* applied equally to both of the orders from which they were appealing. These are the common issues the Zoccas deny existed. There is no substance to their argument on this point.

C. Interpretation of Section 724.050

The Zoccas contend section 724.050 could not have been intended to allow a fee award like that in issue because such an interpretation would allow losing litigants to obtain fee awards on appeal under section 724.080 by paying the judgment, moving for an order compelling the judgment creditor to execute a satisfaction of judgment, and then filing a notice of appeal from the judgment. Then, according to the Zoccas, should the losing party prevail on appeal, the respondent would be liable for all of the appellant's attorney fees under section 724.080 since the fees would be attributable to appellant's defense of the order requiring the respondent to execute a satisfaction of judgment.

The first flaw in this scenario is that if the appellant in fact satisfied the respondent's trial court judgment, the respondent would have no reason *not* to execute and deliver a satisfaction of judgment to him. No motion compelling such action would be necessary and no order compelling it would have to be defended on appeal. Even assuming the appellant had to obtain an order compelling the respondent to execute a satisfaction of judgment, who would appeal from the entry of the order? The appellant cannot appeal from an order in his favor, and the respondent has no reason to appeal it if the judgment has in fact been satisfied. Even assuming these issues away, there would be no factual or legal overlap between attacking the judgment and defending the order compelling a satisfaction of judgment to be executed. The latter would be confined to the issue of whether the judgment amount had in fact been paid, whereas the former would involve the merits of the judgment. The Zoccas' argument that section 724.050, as applied here, could be misused as an improper fee-shifting mechanism is meritless.

D. *Waiver of Right to Fees*

The Zoccas maintain Giovanni waived his right to fees for defending the satisfaction of judgment order in *Zocca I* by failing to appeal from the trial court's ruling denying him the fees he incurred in obtaining the order in the trial court. We disagree. Giovanni certainly waived his right to fees incurred *in the trial court* to obtain the satisfaction of judgment order in the first place by failing to appeal from the order denying them. But that is not a waiver of the right to seek fees incurred *after* that point in defending the order on appeal. The Zoccas cite no authority to the contrary and we have found none.

E. *Impairment of the Right to Appeal*

The Zoccas cite case law to the effect that the execution and filing of a satisfaction of judgment ends a litigant's right to appeal the court's order or judgment, and argue they should not have been made liable for attorney fees merely for acting to protect their right to appeal from the underlying judgment. (See, e.g., *Guho v. City of San Diego* (1932) 124 Cal.App. 680, 684.)

Contrary to the Zoccas' position, the Zoccas were not faced with a "Hobbesian choice" between refraining from bringing a potentially meritorious appeal and becoming potentially liable for Giovanni's attorney fees if they proceeded with the appeal and lost. They were *not* required to appeal from the order compelling execution of a satisfaction of judgment in order to protect their right to appeal from the denial of their section 473(b) motion. The satisfaction of judgment order was either automatically stayed by section 916, subdivision (a), or could have been stayed by taking any of the actions the trial court deemed necessary under sections 917.2, 917.3, or 917.6. Even if the order was not stayed, the Zoccas' execution of a satisfaction of judgment under the compulsion of a court order—without in fact having voluntarily accepted any benefit resulting from the judgment—would not have constituted a waiver of their right to appeal the denial of their section 473(b) motion. (See *Heacock v. Ivorette-Texas, Inc.* (1993) 20 Cal.App.4th 1665, 1671–1672.) But because the Zoccas opted to appeal from the satisfaction of judgment order, they voluntarily exposed themselves to an award under section 724.080 for the appellate fees Giovanni incurred in defending it.

F. Trial Court Discretion to Deny Fees

Relying on the following language found in section 724.050, subdivision (e), the Zoccas argue a fee award was not justified because they had "just cause" for not complying with Giovanni's demand for a satisfaction of judgment: "If the judgment has been satisfied and the judgment creditor fails without just cause to comply with the demand within the time allowed, the judgment creditor is liable to the person who made the demand for all damages sustained by reason of such failure and shall also forfeit one hundred dollars (\$100) to such person." Since the Zoccas had "just cause" not to comply with Giovanni's demand—they were in the process of challenging the order reducing their monetary judgment to zero—they argue the trial court had discretion to deny Giovanni a fee award for prevailing in the appeal.

While section 724.050 gives the trial court some discretion over whether to award damages or a penalty in connection with an order compelling execution of a satisfaction of judgment, section 724.080 includes no similar flexibility. It specifies the court "shall

award reasonable attorney's fees to the prevailing party." (§ 724.080.) In this case, Giovanni was not awarded fees because the Zoccas refused his written demand for a satisfaction of judgment, but because the Zoccas appealed from the ensuing order compelling them to comply with the demand. Section 724.050, subdivision (e) had no bearing on their liability in these circumstances.

G. Amount of the Award

The Zoccas claim the trial court abused its discretion in granting Giovanni \$32,000 in fees since the fee award exceeds the amount of damages at stake in the appeal of \$24,684.

In support of his motion for fees in the trial court, Giovanni submitted detailed time records maintained by his counsel of record, Christopher Cole, concerning his work on the appeal in *Zocca I* along with a declaration from Cole explaining the fees were higher than normal because of extensive disputes over whether this court could or should take judicial notice of documents that were not part of the trial court record, and Cole's asserted need to extensively revise the draft respondent's brief after these issues were determined. According to Cole's declaration, over \$19,000 in fees were incurred on these issues. The trial court reduced Giovanni's fee award by 27 percent from the original amount requested of \$44,152.50, to \$32,000.

First, the Zoccas understate the amount at stake in the appeal. Giovanni's financial exposure if he lost the appeal included both the amount of the original judgment the Zoccas were seeking to reinstate (\$24,684), his potential liability under section 724.080 for the Zoccas' attorney fees incurred on appeal, and his own attorney fees. Substantially more than \$32,000 was therefore at stake. Further, it was not Giovanni but the Zoccas who initiated the appeal and controlled its scope. Giovanni was in a reactive posture and was compelled to respond adequately to each of the issues the Zoccas raised at the risk of a considerable financial exposure if he failed to do so. The Zoccas have the burden of demonstrating the trial court abused its discretion in determining the reasonableness of Giovanni's defensive efforts and strategy. (*Maughan v. Google Technology, Inc.* (2006) 143 Cal.App.4th 1242, 1249–1250.) Apart from the

asserted disproportionality between the fees awarded and the amount at stake, the Zoccas offer no evidence or argument in that regard and therefore fail to meet their burden of demonstrating the trial court award “ ‘exceeded the bounds of reason.’ ” (*Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 785.)

III. DISPOSITION

The December 16, 2010 order granting fees incurred on appeal is affirmed.

Margulies, Acting P.J.

We concur:

Dondero, J.

Banke, J.